THE PRINCIPLE OF DIPLOMATIC IMMUNITY UNDER THE NEW HAVEN SCHOOL OF JURISPRUDENCE

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Introduction

There has always been, and there will always be, criticism when it comes to the instrument of diplomacy. Ambrose Bierce once stated that diplomacy was the patriotic art of lying for one's country.[1] This is one example of a critique regarding diplomacy in general and, of course, there will always be those who do not see the need for diplomatic relations, or at least they do not think that these are of fundamental importance in order to establish, improve and maintain the coexistence of states in the international community. However, when it comes to international law-making, especially focusing on today´s more globalized reality, it cannot be denied that diplomacy still serves as one of the most fundamental instruments to manage crises, prevent outbreaks of hostilities between nations, and promote peace and security amongst states.[2]

Also, it cannot be denied that the globalized world and its values enunciated after World War II in the UN Charter is under attack

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[1] *Ambrose Bierce*, BRITANNICA (June 20, 2022), https://www.britannica.com/ biography/Ambrose-Bierce (last visited Apr. 9, 2023); *See also Ambrose Bierce,* POETRY FOUNDATION, http://www.poetryfoundation.org/bio/ambrose-bierce (last visited Apr. 9, 2023).

[2] *See generally* U.N. General Assembly Security Council, *Report of the Secretary-General on the work of the Organization "Supplement to an Agenda for Peace: Position Paper of the Secretary-General on the Occasion of the Fiftieth Anniversary of the United Nations*, ¶ 23, U.N. Doc. A/50/60-S/1995/1 (Jan. 3, 1995) (stating "The United Nations has developed a range of instruments for controlling and resolving conflicts between and within States. The most important of them are preventive diplomacy and peacemaking.").

these days. There are many tensions, not only between the People´s Republic of China and the United States of America, but also between the People´s Republic of China and other states. Similarly, the conflict between the Russian Federation and Ukraine leads to turmoil in many sectors worldwide, especially in Europe and particularly affecting Europe´s energy supply as well as the global food chain, while different states have various interests and promote unique opinions. This is why both establishing and maintaining the balance of power and cooperation on the international level becomes more difficult every day.[3] Thus, some refer to today´s situation as a turning point in history.[4] Accordingly, the instruments of diplomacy might be needed now more than ever before.

Yet, one can question whether diplomacy is still needed in exactly the same way it used to be in former times since nowadays communications as well as conflicts are different in nature.[5] There are still many armed conflicts around the world, which have had and still have an impact on the so-called international community within the last couple of years.[6] In addition, there are increasingly more new threats to states due to advanced technologies. For example, there has been a

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[3] *See* VANESSA KIRCH, SOCIAL NETWORKS - THE MODERN-DAY FAMILY (Springer, 2021).

[4] Ishaan Tharoor, *The War in Ukraine and a 'Turning Point in History'*, WASH. POST (April 4, 2022), https://www.washingtonpost. com/world/2022/04/04/war-ukraine-turning-point-history/ (featuring the Chancellor of the Federal Republic of Germany speaking of a turning point in history after the Russian Federation´s aggression against Ukraine in February 2022).

[5] Especially when it comes to new and advanced technologies, there have been tremendous changes, improvements and innovations that also have an impact on diplomatic conduct, duties and responsibilities.

[6] One event that had a global impact on many different levels was the Arab Spring. For example, the so-called international community was getting involved in Libya due to the United Nations Resolutions 1970/2010 and 1973/ 2010 as well as the subsequent North Atlantic Treaty Organization (NATO) mandate. *See* S.C. Res. 1970/2010, *available at* https://documents-dds-ny.un.org/doc/UNDOC/GEN/N11/245/58/PDF/N1124558.pdf?OpenElement; *See also* S.C. Res. 1930/2010, *available at* https://digitallibrary.un.org/record/684439?ln=en; For further information on the NATO mandate, see https://www.nato.int/nato_static_fl2014/assets/pdf/pdf_2011_10/20111005_111005-factsheet_protection_civ.pdf; Besides, as already pointed out, there is the crisis of the Russian Federation and Ukraine that is affecting the world in many ways.

rise in the number of cyberattacks within the last couple of years.[7] This demonstrates that our current reality is dramatically changing due to these new cyber-attacks, which are only possible today due to the advent of new technologies. It has become clear that, besides armed conflicts, there are countless new and different problems states, and the international community as a whole, are facing and have to deal with.[8]

Nevertheless, technologies do not only constitute dangers or threats, but also allows for a much easier and faster means of communication amongst people and states. For this reason, some of the forms considered "classic diplomacy"[9] might not be in demand as much as they used to be. If there is something important or urgent that different heads of state have to speak about, there is necessarily no longer a need for diplomatic agents to meet in person. Even if embassies are still involved, these meetings are more commonly being done without any diplomat present, and many times with the embassies, not the main actors any longer, as the entire range of IT disposal is available.[10]

In Europe, due to the European Union and its instruments, states are growing closer together as their heads of state and foreign ministers talk and meet constantly. However, it is no longer a necessity to have diplomats or state representatives travel in order to meet each other because of the ubiquity of video conferences and the shrinkage of distance.[11] Furthermore, it has to become a norm that diplomats

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[7] *See* Siobhan Gorman, *Computer Worm Hits Iran Power Plant*, WALL ST. J. (Sep. 26, 2010), https://www.wsj.com/articles/SB10001424052748704082104575515581009698978 (stating that in 2010 there was an attack on an Iranian nuclear power plant by a cyber worm which was designed to bring down industrial complexes.).

[8] *See* Ben Rooney, *Cyber Attacks Set to Increase,* WALL ST. J. (Jan. 17, 2011), http://blogs.wsj.com/tech-europe/2011/01/17/cyber-attacks-set-to-increase/ (predicting an increase in cyberattacks in the near future) (last visited Apr. 9, 2023).

[9] *See* Claas Knoop, *End or Change of Classical Diplomacy? The Development of a European External Action Service (EEAS) after the Lisbon Treaty 1, ISPSW Institute for Strategic, Political, Security and Economic Consulting* https://www.files.ethz.ch/isn/123685/Okt10_Ende_Wandel_Klass_Diplomatie.pdf ("Classic diplomacy" entails, overall, diplomacy serving the highest purpose which is keeping peace between the different states through wise and farsighted representation and negotiation within the international community).

[10] ENRICO BRANDT & CHRISTIAN BUCK, AUSWÄRTIGES AMT. DIPLOMATIE ALS BERUF 334 (2005).

[11] *See generally* THE COUNCIL OF EUROPE, http://www.coe.int/defaulten.asp (Heads of European countries, the European Union or the United Nations have to meet each other anyways - for example, foreign ministers of European countries meet once a

need not physically hand over a document as they used to do in the past because modern technologies allow most things to be sent encrypted via Email.[12]

Nevertheless, it is noteworthy to mention that almost all European countries share the opinion that the duties of an embassy have expanded because of the new situation of increased information, communication, traveling and cultural dialogue amongst states. In response, some countries have even increased the number of persons working at an embassy and others have installed embassies in those countries where they did not have one until just recently.[13]

Therefore, it can be said that diplomats are still needed in today's globalized world in order to promote their countries and provide assistance to their citizens who seek help at an embassy outside of their home country, but at the same time, it is inevitable that diplomats have to adapt to new situations in modern society from time to time. Taking into account the history of how states, laws, and diplomacy have developed over time, not only should it be asked how exactly the diplomat's tasks have changed, but also whether all these changes could have an impact on the diplomat's legal status, his protection and immunities under the law.

Thus, the principle of diplomatic immunity will be examined as it is quite clear that this principle has always been controversial, especially when it comes to violent crimes a diplomat commits outside of his or her home country. [14]

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year because of the Committee of Ministers of the Council of Europe, a separate body from the European Union, that is promoting co-operation between all countries of Europe.). *See also* Laura LaBerge, Clayton O´Toole, Jeremy Schneider & Kate Smaje, *How Covid-19 has pushed companies over the technology tipping point – and transformed business forever*, MCKINSEY & CO. (Oct. 5, 2020), https://www.mckinsey.com/business-functions/strategy-and-corporate-finance/our-insights/how-covid-19-has-pushed-companies-over-the-technology-tipping-point-and-transformed-business-forever (During the ongoing Covid-19 pandemic it became quite clear that the use of new technologies, even for important meetings, is quite simple and rewarding.).

[12] *See* Rooney, *supra* note 8.

[13] Knoop, *supra* note 9, at 334, 348-49.

[14] *Id*. at 363 (It should be noted that diplomatic immunity should be understood as a diplomat being free from criminal jurisdiction and not being brought before administrative, criminal, or civil courts, although the laws of the receiving state also apply to diplomats. In simple words, in principle and apart from only a few exceptions,

It has been questioned multiple times whether the principle of diplomatic immunity should still be guaranteed the way it used to be traditionally or whether new limits should be established. Furthermore, the question arises of how the international protection of human rights comes into play in this context. What happens if a diplomat commits, for example, a serious crime and violates a fundamental human right or a so-called *jus cogens* norm, a crime against humanity or a war crime?[15]

Today's provisions that are applicable when it comes to diplomatic and consular affairs were created in order to promote peace and security amongst states about half a century ago, but what exactly does it mean in today's reality? Are these laws enough in order to contribute to stable and peaceful relationships between different countries? How do states achieve these goals? Overall, is there really nothing a specific individual or state could do if a diplomat violated their rights while being protected due to the principle of diplomatic immunity? What about the victim's rights? Should there be an easier way to limit diplomatic immunity in the event of a particular criminal behavior, or does the currently existing law already provide enough legal measures in order to guarantee justice? Furthermore, what happens if one looks at the question through a human rights perspective?

In order to answer some of these questions, a closer look at the principle of diplomatic immunity is necessary. By presenting the principle of diplomatic immunity using the intellectual toolbox of the New Haven School of Jurisprudence we will undergo a policy-oriented analysis aiming to strengthen a public order of human dignity developed by the so-called "Policy-Oriented Jurisprudence."[16]

The New Haven School, or Policy-Oriented Jurisprudence, established by Myres McDougal and Harold D. Lasswell, should be considered the most innovative approach to law developed during the 20th

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persons enjoying diplomatic immunity can do whatever they want to do without the receiving state´s courts being able to persecute them.).

[15] *See* Section II: *Past Trends in Decision and Conditioning Factors*.

[16] McDougal et al., *The World Constitutive Process of Authoritative Decision,* 19 J. LEGAL EDUC. 253 (1967); *see also* HAROLD D. LASSWELL & MYRES S. MCDOUGAL, JURISPRUDENCE FOR A FREE SOCIETY: STUDIES IN LAW, SCIENCE AND POLICY (1992).

century.[17] This theory works to find solutions to societal problems and defines law as a process of authoritative and controlling decisions over time in order to promote and establish a public order of human dignity, which categorically differs from other approaches to the law. According to Professor Siegfried Wiessner,

> within that process, the lawmaking function is essentially a process of communication focusing on messages of policy content, i.e., decisions, sent by persons with authority within a certain community to members of that community, messages backed up by a threat of real deprivation of values or a high expectation of indulgences or benefits.[18]

In contrast to classical positivism, which is based on written law and decisions of the past, this policy-oriented approach does not only include rules and regulations, decisions of the past, but also other factors which have to be taken into account when thinking of a problem – for example, socio-political events or scientific or philosophical ideas which are the so-called conditioning factors of the decisions when it comes to a certain problem.[19] The problem itself has to be delimited, using all scientific, technological, or other knowledge at the researcher's disposal. It is, therefore, a theory of interdisciplinary research, an innovative, and much more open-minded approach to law.[20] In addition, it cannot be denied that one always loves to look at the social consequences and outcome of a rule or a law in real life rather than the isolated legal framework itself or, as Michael Reisman once stated:

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[17] *See generally* W. Michael Reisman et al., *The New Haven School: A Brief Introduction,* 32 YALE J. INT'L L. 575 (2007).

[18] Siegfried Wiessner, *Law as a Means to a Public Order of Human Dignity: The Jurisprudence of Michael Reisman*, 34 YALE J. INT'L L. 525, 525-26 (2009).

[19] LOOKING TO THE FUTURE: ESSAYS ON INTERNATIONAL LAW IN HONOR OF W. MICHAEL REISMAN 22, 23 (Mahnoush H. Arsanjani, Jacob Katz Cogan, Robert D. Sloane & Siegfried Wiessner eds., 2010).

[20] *See* Siegfried Wiessner, *Professor Myres Smith McDougal: A Tender Farewell*, 11 ST. THOMAS L. REV. 203 (1999).

> Because the New Haven's goal is understanding and influencing decisions in ways that will precipitate desired social outcomes, the *what* of inquiry is necessarily broader than the *what* of conventional analysis.[21]

Although the New Haven School of Jurisprudence was critically discussed by many positivists,[22] its approach that law should first and foremost serve the human being is more than enlightening. I would like to, once again, share my very own story about when I was first introduced to Policy-Oriented Jurisprudence.

I remember more than ten years ago when I was just beginning my doctorate at St. Thomas University College of Law in Miami, Florida I visited a Professor at the Yale Law School in New Haven, Connecticut who asked me why I would like to follow the approach of Policy-Oriented Jurisprudence in my doctoral thesis instead of using one of the other methodologies which were more well-known, often applied, and also might serve me better if I wanted to get into the academic field. At this moment, I was thinking of what another great Professor once told me who, like myself, first studied law in the Federal Republic of Germany, a country where civil law, meaning written law that finds its base essentially in codes and statutes, is the only basis to decide cases and to consider the law. He was entering a new world of seeing law, reality, and policy in an integrated way when learning first about the New Haven School of Jurisprudence. According to him, and also according to my very own experience, Policy-Oriented Jurisprudence was a liberation from the straitjacket of legal positivism.[23] He also defined the role of a lawyer as a "doctor of the social order," aiming to find legal therapies through the detailed diagnosis of a particular societal ill under the guiding light of an order of human dignity.[24]

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[21] Michael W. Reisman, *The View from the New Haven School of International Law,* 86 Proc. AM. SOC'Y INT'L L. 118, 121 (2004).

[22] *See* Siegfried Wiessner, *The New Haven School of Jurisprudence: A Universal Toolkit for Understanding and Shaping the Law*, 81 ASIA PAC. L. REV. 45, 46 (2010).

[23] Wiessner, *supra* note 20.

[24] Siegfried Wiessner, *Doctors of the Social Order: Introduction to New Haven Methodology*, *in* HANDBOOK ON HUMAN TRAFFICKING, PUBLIC HEALTH AND THE LAW 8-17 (Wilhelm Kirch et al. eds., Georg Thieme Verlag, Stuttgart, 2014).

Many of New Haven's values are reflected in the "Report of the United States of America submitted to the U.N. High Commissioner for Human Rights in Conjunction with the Universal Periodic Review, 2010."[25] While the approach of the Policy-Oriented Jurisprudence aims to find answers to actual problems, it recommends choosing the decision that would maximize access by all to the processes of shaping and sharing all things humans want out of life, i.e. value.[26] Seeing such values as human aspirations, it especially pays attention to the eight values of a world order of human dignity that are reflected in different articles of the 1948 Universal Declaration of Human Rights[27] – affection, enlightenment, power, rectitude, respect, skill, wealth and well-being.[28] Also, the New Haven School of Jurisprudence would define the term "human rights" as an authoritative and controlling response of the international decision-making process relating to claims of human beings in order to protect and strengthen specific such values, and this policy-oriented approach can be seen as the answer to a long needed new approach in order to create a more effective protection of human rights on the international level. "The principle that an ideal legal order should allow all individuals, and particularly the weakest among them, to realize themselves and accomplish their aspirations."[29]

That is why, in the following, the New Haven School of Jurisprudence´s proper jurisprudential techniques in the analysis of the

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[25] United Nations Universal Periodic Review, *Report of the United States of America Submitted to the U.N. High Commissioner for Human Rights in Conjunction with the Universal Periodic Review* (2010), https://2009-2017.state.gov/documents/organization/146379.pdf.

[26] *See* Wiessner, *supra* note 22, at 51, 52.

[27] *See* G.A. Res. 217 (III), *Universal Declaration of Human Rights* (Dec. 10, 1948) (Article 1 states "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.").

[28] Harold D. Lasswell & Abraham Kaplan, POWER AND SOCIETY: A FRAMEWORK FOR POLITICAL INQUIRY (1950) (these eight values were essentially formulated and empirically researched by Professor Harold D. Lasswell and his associates); *see also* MYRES S. MCDOUGAL, HAROLD D. LASSWELL & LUNG-CHU CHEN, HUMAN RIGHTS AND WORLD PUBLIC ORDER: THE BASIC POLICIES OF AN INTERNATIONAL LAW OF HUMAN DIGNITY (1980); Siegfried Wiessner & Andrew R. Willard, *Policy-Oriented Jurisprudence,* 44 GERMAN Y. B. INT'L L. 96 (2001).

[29] *See* Wiessner, *supra* note 18, at 531.

problem and the development of recommended solutions the so-called New Haven´s "five steps" will be used:

I. Delimitation of the problem and goal clarification: What is the specific problem to be addressed in light of the goals to be achieved?

II. What are the conflicting claims regarding the problem, and who are the claimants, their perspectives and identifications, and what are their base values?

III. Trend and Factor Analysis: What were past trends in decisions and their conditioning factors?

IV. Predictions: What will future decisions be like, in light of changed and changing conditioning factors?

V. Appraisal, Invention of Alternatives, and Recommendations: How do past and future decisions measure up against the goal of a public order of human dignity? What are possible solutions and which one would be the best in order to maximize access by all to the processes of shaping and sharing all things humans value?[30]

In this article, the principle of diplomatic immunity will be discussed, the arising problems will be developed, and a human rights perspective will be taken into account, including the question of whether the involvement of states might be needed in order to protect and promote an order that allows human beings to flourish, as any already existing law as well as any new law should serve human beings and not the other way around.

I. Delimitation of the Problem

Following the New Haven School of Jurisprudence´s five steps as described in the introduction,[31] the problem that should be discussed has to be delimited.

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[30] *See* Wiessner, *supra* note 22, at 48 *et seq.*
[31] *See* Introduction.

So, what is the specific problem when it comes to the principle of diplomatic immunity? In order to outline this specific problem, it is inevitable to give a brief overview of what diplomacy in general, and the principle of diplomatic immunity in particular, are and where they both derived from.

A. Diplomacy – Basic Facts

Dr. iur. Michael Koch, a German diplomat, born in the United States of America,[32] once defined diplomacy as an ancient trade that already began with the "dawn of our history on ancient Egyptian steles as well as on Babylonian clay tablets."[33] Giving a brief overview of the history of diplomacy should help to better understand what diplomacy entails.

While diplomacy already existed long before Christ was born, in Ancient Egypt as well as in Babylonia or in Ancient Greece, so-called modern diplomacy started in Italy in the 13th century. Later, in the 16th and 17th centuries, the first writers appeared in Europe dedicating their work to diplomatic topics and this way, diplomatic rules began to be established and further spread - not only over Europe itself but, sooner or later, throughout the whole world.[34] When it comes to legally binding documents regarding diplomatic affairs, it has to be made clear that there were only a few legal documents - for example, the Vienna Regulation of 1815, the Resolutions adopted by the Institute of International Law in 1895 and 1929, the Harvard Draft Convention on Diplomatic Privileges and Immunities of 1932 - before the 1961 Vienna Convention on Diplomatic Relations (VCDR)[35] was

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[32] Knoop, *supra* note 9, at 405 (Besides many other positions during his career, Dr. iur. Michael Koch was the ambassador of the Federal Republic of Germany not only in the Islamic Republic of Pakistan from August 2008 till April 2012, but he also served as the German ambassador at the Embassy of Germany to the Holy See from August 2018 until his retirement in June 2021.).

[33] *Id.* at 346.

[34] EILEEN DENZA, DIPLOMATIC LAW: COMMENTARY ON THE VIENNA CONVENTION ON DIPLOMATIC RELATIONS 3 (Oxford Commentaries on International Law, 3rd ed. 2008).

[35] Vienna Convention on Diplomatic Relations, Apr. 18, 1961 23 U.S.T. 3227, 500 U.N.T.S. 95 [VCDR] (Besides the VCDR, there are two optional protocols to the VCDR - especially, the one on disputes is interesting to mention as this protocol says that all disputes arising from the interpretation of this VCDR can be brought before

drafted. Together with the Vienna Convention on Consular Relations, it is considered "the very essence of diplomatic and consular law, as well as of diplomatic theory and practice."[36]

Nevertheless, it must be pointed out that diplomacy had already become not only state practice, but also a key part of customary international law long ago so that most provisions of the VCDR simply reflected this source of law.[37] Since its entering into force on April 24, 1962, the VCDR was ratified by almost all states; only a very small number of states parties have made some reservations, and most of the reservations to the articles of the VCDR have to do with diplomatic immunity.[38] Accordingly, it can be said that the VCDR largely codifies pre-existing customary international law that, according to the International Court of Justice, is essential for the maintenance of peaceful relations between states.[39]

After all, diplomacy could simply be defined as communication amongst elites, or in other words, conducting international relations by diplomats in order to manage the crisis, to prevent outbreaks of hostilities between nations, and, overall, promote peace and security among states, inter alia, by negotiating treaties that are acceptable for every party to it.[40]

B. Understanding the Principle of Diplomatic Immunity

After giving some basic facts about how diplomatic rules were developed, a closer look will be taken at the principle of diplomatic immunity. Starting in the 18th century, the rule of immunity of diplomats from criminal jurisdiction became unchallenged and ultimately

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the International Court of Justice (ICJ).).

[36] *See* Milan Jazbec, *The Philosophy of the Preamble to the Vienna Convention on Diplomatic Relations*, DIPLO (May 27, 2022), https://www.diplomacy.edu/blog/the-philosophy-of-the-preamble-to-the-vienna-convention-on-diplomatic-relations/ (The Vienna Convention on Consular Relations of 1963 also includes provisions dealing with consular immunity.).

[37] *See* DENZA, *supra* note 34.

[38] UNITED NATIONS TREATY COLLECTION, https://treaties.un.org/Pages/View Details.aspx?src=IND&mtdsg_no=III-3&chapter=3&clang=_en (June 10, 2022) (193 states have ratified the VCDR.).

[39] United States Diplomatic and Consular Staff in Tehran (United States v. Iran), Judgment, 1980 I.C.J. 3, para. 45 (May 1980) (hereinafter Hostages Case).

[40] DENZA, *supra* note 34.

incorporated into the Vienna Convention.[41] It has to be pointed out that diplomatic immunity is one of the oldest and most classical norms of international law[42] constituting:

> a self-contained régime which, on the one hand, lays down the receiving State´s obligations regarding the facilities, privileges, and immunities to be accorded to diplomatic missions and, on the other, foresees their possible abuse by members of the mission and specifies the means at the disposal of the receiving State to counter any such abuse.[43]

In simple words, diplomatic immunity means, in principle and apart from only a few exceptions, that persons enjoying this immunity can do whatever they want without the receiving country´s courts being able to prosecute them.[44]

C. The Dilemma with respect to the Principle of Diplomatic Immunity

After analyzing the historical roots of the principle of diplomatic immunity,[45] among the wealth of interesting aspects in regards to the principle of diplomatic immunity,[46] the focus of the following

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[41] *Id.* at 281.

[42] *Id.* at 280 (According to Eileen Denza, "inviolability of the person of a diplomatic agent is certainly the oldest established rule of diplomatic law.").

[43] *See* ICJ, Hostages Case, *supra* note 39, para. 86. *Cf. also* UNITED NATIONS TREATY COLLECTION, *supra* note 38, at 40, 80 (This means that diplomatic immunity cannot be limited or impacted by any other norm of international law.).

[44] *See* UNITED STATES DEPARTMENT OF STATE OFFICE OF FOREIGN MISSIONS, DIPLOMATIC AND CONSULAR IMMUNITY: GUIDANCE FOR LAW ENFORCEMENT AND JUDICIAL AUTHORITIES (2018), https://www.state.gov/wp-content/uploads/2019/07/2018-DipConImm_v5_Web.pdf ("Diplomatic immunity is a principle of international law by which certain foreign government officials are not subject to the jurisdiction of local courts and other authorities for both their official and, to a large extent, their personal activities.").

[45] *See* MYRES S. MCDOUGAL, HAROLD D. LASSWELL & JAMES C. MILLER, THE INTERPRETATION OF AGREEMENTS AND WORLD PUBLIC ORDER. PRINCIPLES OF CONTENT AND PROCEDURE 3 (1967) (Learning about the history of a certain subject is always of utmost importance in order to understand its present relevance.).

[46] *Cf.* NIKLAS WAGNER, HOLGER RAASCH & THOMAS PRÖPSTL, WIENER

remarks will be on the prosecution of diplomats committing felonies, for example, killing or human trafficking of persons. In other words, the author will focus on the issue of diplomatic immunity leading to the general prohibition of criminal persecution of a diplomat outside of his or her home country, even if the diplomat has committed serious crimes.[47] This consequence may be seen as quite unfair and unjust in the eyes of many, particularly, the host population of the diplomat, who may be among the victims of such acts.

II. Conflicting Claims, Claimants, Identifications, and Bases of Power

With respect to this issue, it is important to identify the relevant claims, claimants, and bases of power. First of all, the obvious claimants here are states and their governments as well as the individuals who either are diplomats or victims.

Claims for prosecution would come from the victims of crimes that were committed by a person who enjoys the protection of diplomatic immunity. In contrast, the diplomat would claim protection from such prosecution due to the principle of diplomatic immunity. These conflicting claims lead to a huge dilemma as the protection of the victim´s rights seem impossible to achieve in light of the full enjoyment of diplomatic protection. When the diplomat commits a serious crime – for instance, killing or human trafficking – his right of being protected against any criminal proceedings collides with the victim´s valid claims.[48] The latter's claims are under the modern understanding of international law and also often elevated to the status of human

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ÜBEREINKOMMEN ÜBER KONSULARISCHE BEZIEHUNGEN VOM 24. APRIL 1962. Kommentar für die Praxis 277 *et seq*. (2007) (A related concept to that of diplomatic immunity is consular immunity; while consular personnel enjoy immunity from legal process only in respect of official acts, diplomatic agents have full personal inviolability and immunity.).

[47] Sherzod Toshpulatov & Nigina Khudayberganova, *Diplomatic Immunity under International Law: Legal Regulation and Current Challenges* (November 10, 2021), https://ssrn.com/abstract=3950704 (providing a brief introduction to the principle of diplomatic immunity).

[48] In these cases, not only domestic criminal law might be affected, but also possible violations of human rights might have occurred.

rights, which are addressed against the state, including the host state of the diplomat.[49]

As to the bases of power of the different claimants, there seems to be no need for a diplomat to do anything regarding the legal protection of his or her rights at the moment. In contrast, the victim could stand up for his or her rights. Although it seems difficult to determine what could be considered his or her real basis of power to achieve the goal of prosecution. The state would have, at least overall, the right and power to pass certain rules and regulations in order to give effect to the principle of diplomatic immunity it has to observe under customary international law.

That is why the issue regarding the principle of diplomatic immunity in the context of serious crimes committed by a diplomat will be further developed by analyzing pertinent past trends in decisions.

III. Past Trends in Decision and Conditioning Factors

In order to better understand how the principle of diplomatic immunity, that creates the dilemma described above, was established and comes into play a brief overview of the history of diplomacy in general as well as of diplomatic immunity, in particular, is required. By doing so, a closer look will be taken at the relevant provisions of the Vienna Convention on Diplomatic Relations, the essential law when speaking of diplomatic relations.[50] Furthermore, some cases will be exposed in order to show what usually happens when it comes to crimes committed by a person protected under the principle of diplomatic immunity and, accordingly, not "developing friendly relations"[51] towards other persons and states, in most cases, the particular state simply removes these diplomats from their working places by taking them back either to their home country or a third state in order to avoid prosecution and any kind of conflict with the receiving country where the crime occurred.

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[49] For example, when speaking of a violation of human rights, the relationship between the state and the individual is always affected - while governments are not protected, their people are enjoying protection and it is the state that has to establish and follow specific rules in order to treat the individual according to these standards.

[50] *See* DENZA, *supra* note 34.

[51] *See* Vienna Convention on Diplomatic Relations, Preamble.

After all, the focus of this chapter will particularly be on the issue of diplomatic immunity which, even in cases of terrible crimes, leads to no criminal prosecution of a diplomat.

A. The General Legal Protection under Diplomatic Law

As already stated above, it has to be pointed out that diplomatic relations have a much longer history than going back to the Vienna Convention on Diplomatic Relations of 1961.[52] As already explained, it is true that diplomacy already existed long before Christ was born, and so-called modern diplomacy started in Italy in the 13th century from where it moved on to other parts of Europe and its rules developed over time – from rules that established a ranking of ambassadors in accordance to the standing of their home countries to the 1961 Vienna Convention on Diplomatic Relations (VCDR).[53] Furthermore, diplomacy had already become not only state practice, but also real customary international law, which most provisions of the VCDR has reflected.[54] So, what exactly does this mean? How did international law develop and what is customary international law?

First of all, when it comes to legal protection on the international level, there is usually always a human need first and the response to it that could lead to an internationally recognized right.[55] The process of transforming such a need into law is usually a very complex one though; especially, when recognizing a human need as a human right. This would only occur if there were no other ways to protect the essential needs of individuals.[56] Furthermore, there are two

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[52] *See* DENZA, *supra* note 34.
[53] *Id*.
[54] *Id*. *See also* Rosalyn Higgins, *The Abuse of Diplomatic Privileges and Immunities: Recent United Kingdom Experience,* 79 AM. J. INT'L L. 641 (1985).
[55] INTERNATIONAL INCIDENTS: THE LAW THAT COUNTS IN WORLD POLITICS (W. Michael Reisman & Andrew R. Willard eds., 1988) (provides an overview of how international law in general developed over time).
[56] *See* Laurence R. Helfer & Anne-Marie Slaughter, *Toward a Theory of Effective Supranational Adjudication,* 107 YALE L.J. 273, 345 (1997); *see also* JACK DONNELLY, UNIVERSAL HUMAN RIGHTS IN THEORY AND PRACTICE 12 (2d ed. 2002) (This would be considered a step taken as "last resort." Furthermore, not every claim of a right that might seem important is also considered a right falling under international law - while there are some rights that are defined as fundamental rights by the international community, other rights do not fall in this category.).

main sources of international law – international treaties and customary international law.[57] In order to establish a rule or principle of customary international law, two elements are needed: state practice and so-called *opinio juris*.[58]

Nevertheless, it is not always easy to determine which provisions are considered customary rules. Article 38 (1)(b) of the Statute of the International Court of Justice refers to "international custom, as evidence of a general practice accepted as law" which could lead to a misunderstanding as this provision does not mean that customary law is evidence of a common practice accepted as law, but rather that the common practice and acceptance of it leads to customary law.[59] Furthermore, besides the two elements, state practice and *opinio juris*,

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[57] Statute of the International Court of Justice, art. 38, para. 1 (Defining the two main sources of international law – international treaties and customary international law – can be found in Article 38 (1)(a) and (b) of the ICJ Statute. A third source, general principles of law recognized by civilized nations, is listed in Article 38(1)(c) of the ICJ Statute, but it is of lesser significance in our context. The ICJ Statute was published on April 18, 1946 and consists of 70 articles. This statute was created in 1945 under the Charter of the United Nations in order for the Court to be the principal judicial organ of the United Nations).

[58] *See id*.; *see generally* North Sea Continental Shelf (Germany v Denmark), Merits, Judgment, 1969 150 I.C.J. (Feb. 1969); ANTHONY D´AMATO, THE CONCEPT OF CUSTOM IN INTERNATIONAL LAW (Cornell Univ. Press 1971) (State practice requires four elements: duration of practice, uniformity and consistency of the practice, generality and empirical extent of the practice and conformity of state practice. Moreover, *opinio juris* demands that states are applying a certain practice because of a legal obligation meaning that three elements have to be met: legality of the rules that are protecting the right, relationship of the right to international law and awareness of the states regarding the right. Accordingly, the Statue of the International Court of Justice states that "a general practice accepted as law." Yet, it has to be noted that it is not necessary that all countries comply with state practice and *opinio juris*, but customary international law is rather widespread. Furthermore, it is also possible that customary international law is established instantly.).

[59] *Id. See* THEODOR SCHWEISFURTH, VÖLKERRECHT 63, 64 (2006); in this context, it should be explained again that, therefore, according to Article 38 (1) (b) ICJ Statute, Customary international law as the second most important source of international law requires two elements (state practice to prove custom and so-called *opinio juris*) in order to establish a principle or rule that falls under customary international law. *See* George E. Edwards, *International Human Rights Law Challenges to the New International Criminal Court: The Search and Seizure Right to Privacy,* 26 YALE J. INT´L L. 323, 327 (2001).

there is another requirement demanding that state practice has to be performed by a certain number of states in order to establish customary international law. This usually comprises of conforming practice by a very widespread number of states, including those who are specially affected by the rule in question.[60] Summing up, customary international law "consists of rules of law derived from the consistent conduct of states acting out of the belief that the law required them to act that way."[61]

After briefly explaining the basics of international law and the concept of customary international law, as most of the provisions of the Vienna Convention on Diplomatic Relations are simply reflecting diplomacy reflecting customary international law, now it is necessary to take a closer look at the VCDR done in Vienna on April 18, 1961, and entered into force on April 24, 1964 itself by starting with the preamble of the VCDR stating:

> The States Parties to the present Convention,
> *Recalling* that peoples of all nations from ancient times have recognized the status of diplomatic agents,
> *Having in mind* the purposes and principles of the Charter of the United Nations concerning the sovereign equality of States, the maintenance of international peace and security, and the promotion of friendly relations among nations,
> *Believing* that an international convention on diplomatic intercourse, privileges and immunities would contribute to the development of friendly relations among nations, irrespective of their differing constitutional and social systems,
> *Realizing* that the purpose of such privileges and immunities is not to benefit individuals but to ensure the

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[60] *See* THOMAS BUERGENTHAL & SEAN D. MURPHY, PUBLIC INTERNATIONAL LAW IN A NUTSHELL 22, 23 (6th ed. 2019) (stating that especially because of the fact that many are of the opinion that the majority of states have to consent to a customary rule and in addition, there also needs to be a state practice of those states that fall under this rule, it is so difficult to determine if a certain rule actually is customary international law.).

[61] SHABTAI ROSENNE, PRACTICE AND METHODS OF INTERNATIONAL LAW 55 (1984).

> efficient performance of the functions of diplomatic missions as representing States,
> *Affirming* that the rules of customary international law should continue to govern questions not expressly regulated by the provisions of the present Convention.[62]

Furthermore, looking at the VCDR, one finds definitions of specific terms in the field of diplomacy when it comes to Article 1 of the VCDR – for example, Article 1 of the VCDR states:

> For the purpose of the present Convention, the following expressions shall have the meanings hereunder assigned to them:
>
> (a) The "head of the mission" is the person charged by the sending State with the duty of acting in that capacity;
> (b) The "members of the mission" are the head of the mission and the members of the staff of the mission;
> (c) The "members of the staff of the mission" are the members of the diplomatic staff, of the administrative and technical staff and of the service staff of the mission;
> (d) The "members of the diplomatic staff" are the members of the staff of the mission having diplomatic rank;

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[62] *See* DENZA, *supra* note 34; *see also* Jazbec, *supra* note 36 (Furthermore, it has to be understood that this preamble is more than a simple introduction to the VCDR. Thus Milan Jazbec states: "The philosophy of the preamble to the *VCDR* preamble helps us understand the interdisciplinary, interrelated, structural, and contextual comprehension of its mission. The preamble is far from being a mere introduction to the main body of the text of the convention. We grasp it as a political manifesto of states (the parties to the convention) as it reflects their compliance will maintain international peace and security. Consequently, it also reflects the concept of diplomacy, exhibiting a relentless drive for peace, security, and the promotion of friendly relations among nations (the fifth function of a diplomatic mission). Last but not least, it cements a broad, clear, and firm legal background for what diplomats do. It is characterized by tradition, continuity, and flexibility, and oozes respect, mutual consent, and ethics. There is a continuous ambition for these aspects to be present on a daily basis in diplomatic practice.").

> (e) A "diplomatic agent" is the head of the mission or a member of the diplomatic staff of the mission …[63]

In addition, over all, Article 3 (1) VCDR describes the diplomatic functions:

> The functions of a diplomatic mission consist, inter alia, in:
>
> (a) Representing the sending State in the receiving State;
> (b) Protecting in the receiving State the interests of the sending State and of its nationals, within the limits permitted by international law;
> (c) Negotiating with the Government of the receiving State;
> (d) Ascertaining by all lawful means conditions and developments in the receiving State, and reporting thereon to the Government of the sending State;
> (e) Promoting friendly relations between the sending State and the receiving State, and developing their economic, cultural and scientific relations.[64]

All these provisions serve as examples of how exactly the VCDR codifies diplomatic rules and conduct.

B. The Legal Protection under the Principle of Diplomatic Immunity

As already stated above, it has to be pointed out that diplomatic relations have a much longer history than going back to the Vienna Convention on Diplomatic Relations of 1961. As already explained, it is true that diplomacy already existed long before Christ was born, and

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[63] In the following, the term "diplomatic agent" according to Article 1 (e) VCDR will be of importance and that is why, especially, Article 1 (a), (c) and (d) VCDR also come into play when defining a "diplomatic agent."

[64] Vienna Convention on Diplomatic Relations art. 3(1), Apr. 18, 1961, 23 U.S.T. 3227, 500 U.N.T.S. 95 [VCDR]; *see also* VCDR, art. 3(2) (clarifying that "nothing in the present Convention shall be construed as preventing the performance of consular functions by a diplomatic mission.").

so-called modern diplomacy started in Italy in the 13th century from where it moved on to other parts of Europe and its rules developed over time – from rules that established a ranking of ambassadors in accordance with the standing of their home countries to the 1961 Vienna Convention on Diplomatic Relations (VCDR).

When it comes to legally defining the principle of diplomatic immunity, Articles 29-38 of the VCDR list the privileges and immunities of diplomats as well as of other persons than nationals of the receiving state.[65]

First and foremost, there is Article 31 VCDR:

> 1. A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State. He shall also enjoy immunity from its civil and administrative jurisdiction, except in the case of:
>
> > (a) A real action relating to private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission;
> > (b) An action relating to succession in which the diplomatic agent is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State;
> > (c) An action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions.
>
> 2. A diplomatic agent is not obliged to give evidence as a witness.
>
> 3. No measures of execution may be taken in respect of a diplomatic agent except in the cases coming under subparagraphs (a), (b) and (c) of paragraph 1 of this article, and provided that the measures concerned can be

[65] *See* VCDR, art. 37 (explaining that, for instance, family members of a diplomat or other staff of an embassy are protected due to the VCDR.).

> taken without infringing the inviolability of his person or of his residence.
>
> 4. The immunity of a diplomatic agent from the jurisdiction of the receiving State does not exempt him from the jurisdiction of the sending State.[66]

Taking a closer look at Article 31 VCDR, it becomes quite clear in which cases a diplomat enjoys immunity, what the diplomat´s role as a witness would be, what exact measures of execution could be taken against the diplomat, and what the principle of diplomatic immunity in relation to the receiving state and in regards to the jurisdiction of the diplomat´s home country means.[67]

Then, it has to be pointed out that diplomatic immunity is a very broad subject. For instance, Article 37 (1) VCDR states:

> The members of the family of a diplomatic agent forming part of his household shall, if they are not nationals of the receiving State, enjoy the privileges and immunities specified in articles 29 to 36.[68]

This provision should serve as an example that diplomatic immunity does not only have to do with diplomats alone, but also with other persons – here, the family members that form part of a diplomat´s household. Moreover, diplomatic immunity often does not only relate to the protected person´s behavior connected to his or her work, but also to whatever this person does within a foreign country acting as a private person.[69] Also, one has to take in mind that there are a lot of rules dealing with how diplomatic immunity is given or notified.[70] Furthermore, there are provisions concerning the special immunity of the premises of the mission, their furnishings, and other property

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[66] VCDR, art. 31.
[67] *See* DENZA, *supra* note 34, at 283-84; *see also* CHARLES J. LEWIS, STATE AND DIPLOMATIC IMMUNITY 2 (3d ed. 1990).
[68] *See* Jazbec, *supra* note 36.
[69] *See* VCDR, art. 31(1) and (3).
[70] *See* VCDR, art. 39.

thereon as well as the means of transport of the mission[71] and provisions for the immunity of the diplomatic bag which is still very common[72] because a diplomatic bag is outside the receiving country´s control as it "shall not be opened or detained."[73]

Coming back to Article 31 (1) VCDR, it has to be highlighted that even states that have not become a party to the VCDR yet,[74] need to apply this provision because of the fact that Article 31 VCDR constitutes a principle of customary international law.[75] So, what happens if it somehow comes to a clash of Article 31 VCDR being customary international law and a *jus cogens* norm? Would a state have to react and if so, in what way? For example, what would go first – the diplomat´s right to diplomatic protection or the victim´s claim of a violation of a *jus cogens* norm?

In order to answer these questions when it comes to a *jus cogens* norm, first of all, it needs to be explained what exactly a *jus cogens* norm is. *Jus cogens* norms can be defined as preemptory norms that have to comply with no matter what – accordingly, no derogation

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[71] *See* VCDR, art.22 (3).

[72] *See* VCDR, art. 27; *see also* Christina Macpherson, *Illegal transport of uranium by U.S. diplomats*, NUCLEAR-NEWS (Dec. 13, 2010), https://nuclear-news.net/2010/12/13/illegal-transport-of-uranium-by-us-diplomats/ (explaining that the diplomatic bag is particularly interesting regarding the United States of America as, until today, U.S. embassies often declare even huge shipping containers being diplomatic bags. One case concerning the United States of America and the diplomatic bag happened in December of 2010 when U.S. Diplomats secretly sent uranium on a commercial airliner using the diplomatic bag system.).

[73] *See* VCDR, art. 27 (3); *see* Higgins, *supra* note 54; U.S. DEPARTMENT OF STATE, Diplomatic Pouches, https://www.state.gov/diplomatic-pouches/; *see also* ROZA PATI, DUE PROCESS AND INTERNATIONAL TERRORISM: AN INTERNATIONAL LEGAL ANALYSIS (2009) (It can be mentioned that when it comes to persons serving in the U.S. military somewhere abroad, the United States of America claims immunity for these persons as well as for their diplomats and accordingly, those persons belonging to the U.S. military can only be brought before U.S. military courts.).

[74] *See* United Nations Treaty Collection, *Chapter III: Privileges and Immunities, Diplomatic and Consular Relations, etc.,* https://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20III/iii-1.en.pdf.

[75] *See* UNITED NATIONS TREATY COLLECTION, *supra* note 38 (stating the International Court of Justice not only emphasized the importance of the VCDR in its former decisions, but, especially, highlighted the great importance of immunity from criminal jurisdiction.).

from these norms by any state is ever possible.[76] This fundamental principle of international law is regulated in Article 53 of the Vienna Convention on the Law of Treaties of 1969:

> *Treaties conflicting with a peremptory norm of general international law ("jus cogens")*
>
> A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.[77]

Correspondingly, it becomes quite clear that a treaty violating a *jus cogens* norm should always be void, but the problem regarding preemptory norms is that there is no clear definition or consensus about what exactly is considered a *jus cogens* norm nor how a provision becomes such a norm, especially, as the Vienna Convention on the Law of Treaties of 1969 simply says that new preemptory norms can be created without any clear specification of what *jus cogens* norms are.[78] In the context of diplomatic relations, it has to be considered that the concept of *jus cogens* formally entered international law

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[76] *See* W. MICHAEL REISMAN ET AL., INTERNATIONAL LAW IN CONTEMPORARY PERSPECTIVE 1300 (2004).

[77] *See* Vienna Convention on the Law of Treaties, art. 53, May 23, 1969 1155 U.N.T.S. 331; 8 I.L.M. 679.

[78] *See* REISMAN ET AL., *supra* note 76. The International Law Commission is presently dealing with the definition of *jus cogens*. In his fifth report, Mr. Dire Tladi provides a non-exhaustive list of precepts the ILC has previously referred to as *jus cogens* norms:
(a) The prohibition of aggression;
(b) The prohibition of genocide;
(c) The prohibition of crimes against humanity;
(d) The basic rules of international humanitarian law;
(e) The prohibition of racial discrimination and apartheid;
(f) The prohibition of slavery;

with the Vienna Convention on the Law of Treaties of 1969 while the Vienna Convention on Diplomatic Relations of 1961 entered into force some years earlier. Accordingly, the question remains whether the principle of diplomatic immunity can even be impacted somehow by the international crime character of the conduct of a diplomat which might lead to a violation of a *jus cogens* norm because even, if this constituted an international crime, the diplomat would most probably still be protected under the principle of diplomatic immunity.

When further examining the VCDR, Article 41 VCDR must be mentioned as it provides the following:

> 1. Without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving State. They also have a duty not to interfere in the internal affairs of that State.
>
> 2. All official business with the receiving State entrusted to the mission by the sending State shall be conducted with or through the Ministry for Foreign Affairs of the receiving State or such other ministry as may be agreed.
>
> 3. The premises of the mission must not be used in any manner incompatible with the functions of the mission as laid down in the present Convention or by other rules of general international law or by any special agreements in force between the sending and the receiving State.[79]

Thus, Article 41 VCDR determines the duties of persons enjoying diplomatic protection and clearly states that these persons should behave according to the law of the receiving country. Yet, and although there is Article 41 VCDR, in some cases, diplomats commit

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(g) The prohibition of torture;
(h) The right of self-determination).
Fifth report on peremptory norms of general international law (jus cogens) by Dire Tladi, Special Rapporteur, 24 January 2022, UN Doc. A/CN.4/747.

[79] *See* Jazbec, *supra* note 36.

crimes and do not behave according to the laws of the receiving state and, as already explained, there is almost nothing that can or would be done in order to waive their diplomatic immunity because of the VCDR, or customary international law.[80]

After all, looking at the VCDR, diplomatic immunity could be defined as a legal institution that excludes specific persons in a foreign country from this country´s prosecution and lawsuits and that guarantees a safe passage of these persons, even if they were expelled because of their conductance, in order to guarantee peace between states. Although Article 32 VCDR provides the possibility for a state to waive the immunity from the jurisdiction of diplomatic agents and other persons enjoying immunity under Article 37 VCDR, in most cases, states do not make use of the possibility to waive a diplomat's immunity, due to the possibility of severe crimes and the aim of states to avoid conflicts.[81]

In the following, three cases of crimes that were committed by a diplomatic agent will be briefly analyzed.

1. The Case of Ms. "Hasniati"

The case of Ms. "Hasniati"[82] occurred between 2003 and 2008. This very serious and extreme case happened in the middle of Berlin and was discovered in 2008. For more than four years, Ms. Hasniati from Indonesia was working for a Yemenite diplomat without being paid, while being deprived of her freedom and, moreover, subjected to physical violence. Ms. Hasniati was treated like a slave as she often worked for nineteen hours a day and was provided with very little food. At the beginning of 2008, after being brought to Berlin two and a half years earlier and being kept in the diplomat´s apartment ever since that time without the possibility to leave this apartment, Ms. Hasniati, whose passport was also kept by the Yemenite diplomat, could finally escape when she became very ill and, therefore, had to go to a hospital.[83]

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[80] *See* Knoop, *supra* note 9, at 460.
[81] *See id.* at 330.
[82] Please note that the victim's real name has been changed.
[83] *See* PETRA FOLLMAR-OTTO & HEIKE RABE, HUMAN TRAFFICKING IN GERMANY: STRENGTHENING VICTIM´S HUMAN RIGHTS (2009); *see also* KOK (HRSG.), FRAUEN HANDEL(N) IN DEUTSCHLAND: BUNDESMINISTERIUM FÜR FAMILIE, SENIOREN,

In light of the facts stated above, the Yemenite diplomat most likely could have been convicted, among other crimes, of human trafficking if he would not have been protected thanks to the principle of diplomatic immunity.

2. The Case of Mende Nazar

There is another extreme and well-reported case that involves the former Sudanese Mende Nazar who was kidnapped from her family in 1992 when she was only twelve years old.[84] After being sold to different persons several times, she ended up serving in a house of a Sudanese diplomat who was residing in London and was treated like a slave. In 2000, after almost twenty years since her abduction, she was able to flee the diplomat´s house thanks to the help of a third person. Mende Nazer´s case became even more recognized when she claimed asylum in Great Britain, which was denied at first. Due to the media and the public interest in her case, she was finally granted asylum and is now a British citizen.[85] Under normal circumstances – meaning without the principle of diplomatic immunity benefitting the Sudanese diplomat – the Sudanese diplomat would have been accused and most probably convicted of several crimes.

3. The Case of Two Pakistani Gunmen

Moreover, there is the case of two Pakistani gunmen who were killed in the Islamic Republic of Pakistan on January 27, 2011. In this case, a U.S. official allegedly shot two Pakistani, and another man died after being run over during this event. Afterwards, the shooter was detained and imprisoned by the Pakistani police, but the United States claimed that he had to be released, insisting on the principle of diplomatic immunity.[86]

FRAUEN UND JUGEND (2008); Dr. Nivedita Prasad, *Hausangestellte von Diplomatinnen, in KOK,* FRAUENHANDEL(N) IN DEUTSCHLAND 98, 99 (2008); Gordon Repinski, *Mitten in Berlin. Diplomat hält Angestellte wie Sklavin*, DER SPIEGEL (Jan. 26, 2008), https://www.spiegel.de/politik/deutschland/mitten-in-berlin-diplomat-haelt-angestellte-wie-sklavin-a-530836.html.

[84] *See* MENDE NAZER & DAMIEN LEWIS, SLAVE: MY TRUE STORY (2005).

[85] *Id*.

[86] Zahid Hussain, *Official From U.S. Kills Two Pakistani Gunmen*, WALL ST. J. (Jan. 28, 2011), http://online.wsj.com/article/SB10001424052748704268104576107

Regardless of the fact that, in this case, the question arose whether the U.S. official who shot the Pakistani citizens could actually rely on the principle of diplomatic immunity; the case should serve as an example that such an incident could cause tremendous damage to the relationship between different states. This case did not only lead to violence and demonstrations amongst the Pakistani population but also lead the widow of one of the two gunmen which were shot to commit suicide. Accordingly, Maleeha Lodhi, a former Pakistani ambassador to Washington, said that "Even if this … matter is resolved, it will leave a trust deficit between the two" (referring to the United States of America and the Islamic Republic of Pakistan).[87] In addition, this case, once again, shows that the discussion on whether the principle of diplomatic immunity should be applied in such a situation – here, alleged murder – still continues.

After examining the most important historical as well as legal aspects of the principle of diplomatic immunity, especially highlighting that Article 31 VCDR is considered customary international law, it must be stated again that not only in the cases described above, but also in almost all cases when it comes to the criminal conduct of a person who can claim protection under the principle of diplomatic immunity. The person who allegedly committed a crime is not brought before any court due to the fact that his or her home country does not make use of the possibility of Article 32 VCDR to waive diplomatic immunity. In contrast, states usually rather further protect their citizens who enjoy the protection of diplomatic immunity by immediately taking these citizens back to their home countries or to a third state. As a result, there are only very few cases that were actually brought before local courts because of the home countries' conduct, meaning protecting their citizens who enjoy diplomatic immunity instead of waiving this immunity to the benefit of the victims, no matter what kind of crime was committed. Moreover, it has to be noted that even if a diplomat was sentenced, he or she usually is no longer within the country where the crime was committed.[88]

20021763838.html.

[87] Zahid Hussain & Tom Wright, *U.S.-Pakistan Tensions Grow over Diplomat,* WALL ST. J. (Feb. 9, 2011), http://online.wsj.com/article/SB10001424052748703313304576132092526001226.html.

[88] *See "Nahe an Sklaverei": Ex-Diplomat verurteilt*, SWISSINFO.CH (July 29, 2009),

To make this dilemma, or this real international problem as one could say, clear, it can be assumed that besides a number of known cases there are most likely even more unknown cases in which respected employees of an embassy are involved in violent crimes, especially, in the context of human trafficking in persons. The fact that there is almost no chance to do anything against such a person, who is enjoying the protection of diplomatic immunity, makes these cases even more tragic. That is why it can be concluded that possible questions related to *jus cogens* norms that might arise are difficult to further discuss and analyze because of the fact that almost none of the cases involving diplomatic immunity are even brought before a court and discussed by lawyers.[89]

In contrast to the Ottoman Empire where diplomats were once seen as the best example of good behavior and, therefore, also were punished in order to serve as a guarantee if their home country misbehaved,[90] nowadays, even when committing the worst of crimes, diplomats are not being held responsible for these offenses in most cases.

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http://www.swissinfo.ch/ger/index/Nahe_an_Sklaverei:_Ex-Diplomat_verurteilt.html?cid=7531342 (provides an example of the case of a housekeeper who almost died of starvation while working for an Indian diplomat who was working for the World Trade Organization in Geneva in the 1990s.).

[89] Nevertheless, there are two recent examples where the principle of diplomatic immunity did not come to play as it did in the past: *Bundes gerichtshof* [BGH][Federal Court of Justice], Jan. 28, *Neue Juristische Wochenschrift* [NJW] 1326–1334 (2021) (Ger.), https://juris.bundesgerichtshof. de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&nr=116372&pos= 0&anz=1; and *U.S. v. Jaliya Chitran Wickramasuriya*, No. 1:18-cr-00120 (D. D.C. July 26, 2022)(Courtlistener). For more information on the case in front of Germany´s top court functional immunity in the context of crimes under international law, *see* Rohan Sinha, *Federal Court of Justice rejects functional immunity of low-ranking foreign State officials in the case of war crimes*, GER. PRAC. IN INT'L LAW (July 6, 2021), https://gpil.jura.uni-bonn.de/2021/07/federal-court-of-justice-rejects-functional-immunity-of-low-ranking-foreign-state-officials-in-the-case-of-war-crimes/#:~:text=The%20Court%20held%20that%2C%20according%20to%20 the%20general,soldier%2C%20in%20the%20exercise%20of%20foreign%20sovereign%20authority. For further information on how the United States is trying to improve the prosecution of those cases dealing with corruption committed by a person who enjoys diplomatic immunity, *see* Scott Woodruff Lyons, *The U.S.` Recent Enhanced Efforts to Fight Corruption by Protected Individuals*, INSIGHTS (Nov. 9, 2022), https://www.asil.org/insights/volume/26/issue/12.

[90] *See* DAVID JAYNE HILL, A HISTORY OF DIPLOMACY IN THE INTERNATIONAL DEVELOPMENT OF EUROPE Vol. 3, The Diplomacy of the Age of Absolutism, 646-

Thus, the question arises as to what a victim of a crime committed by a diplomat can effectively do.

IV. Predictions

After exploring the topic from a legal perspective, the author now aims to discuss what future decisions could look like by using the range oscillating from the most pessimist to the most optimistic developmental construct of the future.[91]

As it is hard to predict what future decisions could be like, first the question is whether diplomacy is still needed in the same essential way as it was in the past. As today´s reality has dramatically changed, due to the fact of globalization and new technologies within the last couple of decades,[92] several factors have emerged that could lead to the conclusion that diplomacy, as it used to be, does not exist anymore and therefore diplomats are no longer needed or in demand.

First and foremost, there is the factor of an easier, faster, and maybe an even better way to communicate with each other.[93] Then, there is the factor of many states being parties to a number of international treaties and organizations, and, as seen above, state officials are meeting each other anyways on a regular basis – in person as well as by making use of the new technologies. Therefore, states are, per se, already part of a vividly interacting international community regardless of the venues of their diplomatic missions.[94] That is why one could come to the conclusion that diplomats are no longer needed.

Nevertheless, this argument fails to take into account that because of the ongoing process of globalization on all kinds of international levels, new challenges and opportunities have been arising

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47 (1914) (back then, diplomats were used as an enforcement mechanism on treaties and international law.).

[91] *See* WILLIAM ASCHER, FORECASTING: AN APPRAISAL FOR POLICY-MAKERS AND PLANNERS (1978) (discusses how to best predict future developments).

[92] *See generally* Introduction.

[93] *See* Ashley Kirk, David Blood & Pablo Gutiérrez, *Europe´s Record Summer of Heat and Fires – Visualized*, THE GUARDIAN (July 26, 2022), https://www.theguardian.com/environment/ng-interactive/2022/jul/26/how-europe-has-been-hit-by-record-fire-damage-and-temperatures (discusses the current situation in Europe with wildfires all over the continent in the summer of 2022 and takes into account the already dramatic impact global warming and climate change has on us today).

[94] *See generally* Introduction.

which might require even more support from diplomatic missions than ever before. These new opportunities – signifying, overall, more freedom of movement and exchange for people as states are growing together much closer – could create an entirely new demand, especially, as one of the most important duties of a diplomat is to maintain and promote foreign relations, political, cultural, and commercial. Thus, it becomes evidently clear that due to globalization, there will now be new tasks a diplomat has to fulfill these days.[95]

Moreover, and as already pointed out, almost all European countries share the opinion that, especially, because of the new situation of more information and communication, traveling and cultural dialogue amongst states, the duties of an embassy have expanded such that some countries have even increased the number of persons working at an embassy and others have installed embassies in those countries where they did not have one until now.[96]

All of the above described demonstrates how the role of diplomacy might have changed, but also how the work of a diplomatic mission has become even more important in today´s globalized world. Diplomats are, therefore, still needed, and some would even argue that without a doubt, diplomats are needed more than ever these days.[97] This leads to the next question – whether the principle of diplomatic

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[95] *See* Knoop, *supra* note 9, at 348-49 (To give some examples, there are more and more people who are able to - sometimes, for the very first time - get in touch easily with foreign countries. Due to this new opportunity, a number of people would like to take advantage of exploring the world. Therefore, these people are often in need of getting a visa, and in most cases, an embassy has to take care of their requests. Furthermore, it is not only because of increased tourism and business travel that there is a huge demand of visas, thus embassies are often more occupied than ever before, but also simple inquiries of people who just ask for information on other countries. For instance, questions about a country´s climate, security, culture and so on. These people might want to go to these countries one day are more common and time-consuming for embassies than in the past. In addition, another contributing factor for busy embassies loaded with visitors is that educational and cultural exchange has increased tremendously in the past decade. Supporting this exchange as well as offering assistance is one of the main tasks an embassy should fulfill.).

[96] *Id.* at 334, 348-49.

[97] *See generally* Introduction (primarily, in order to promote their states and provide help to their citizens as well as to help building and maintaining friendly and peaceful relationships among different countries).

immunity also remains indispensable. If one would come to the conclusion that human rights gain more and more as time goes on, one could also argue that this should lead to some changes in regard to the principle of diplomatic immunity in the near future. Yet, when analyzing the facts discussed above concerning the diplomat´s role in modern reality, it becomes quite clear that the slightest possibility of a sudden change might rather be postponed than realized by the international community. Even if such a change would be desired or underway already, it would still depend on the states, as they are the main actors when it comes to international law, to make this change happen, especially, as the principle of diplomatic immunity is not only codified by the VCDR, but also forms part of customary international law. So, in order to change these "customary rules" or reverse them into "non-customary rules," there would need to be state practice, *opinio juris*, the acceptance of this new practice by a very wide number of states and, above all, time.[98]

Furthermore, it must be mentioned that the International Law Commission (ILC) is already dealing with, the principle of immunity of foreign officials from criminal jurisdiction. Starting its work in 2007, it has by now developed draft articles and an elaborate commentary under the title "Immunity of State officials from foreign criminal jurisdiction," but these articles are "without prejudice to the immunity from criminal jurisdiction enjoyed under special rules of international law, in particular by persons connected with diplomatic missions, consular posts, special missions, international organizations and military forces of a State."[99]

Summarizing the above, it is hard to say whether there is a real chance that any diplomatic rights, protections or immunities could be modified or even abandoned in the near future. Even trying to figure out what could be considered the best-case and the worst-case scenario, in order to come to a comparison of them, is challenging as peace and security on the international level might be at stake when it

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[98] Knoop, *supra* note 9.

[99] International Law Commission Report, UNGAOR, 77th Session, at 187-90, U.N. Doc. A/77/10, Supp. No. 10 (2022) (interestingly, those foreign State officials do not enjoy immunity *ratione materiae* from the exercise of foreign criminal jurisdiction in respect of the following crimes under international law: (a) crime of genocide; (b) crimes against humanity; (c) war crimes; (d) crime of apartheid; (e) torture; (f) enforced disappearance).

comes to the dilemma of whether to protect or prosecute a diplomat.[100] Accordingly, it is difficult to answer the question of what future decisions will be like. It might seem hopeless to fight a principle that has been established such a long time ago and has survived regardless of all its criticism; only time will show whether future decisions might bring about some change.

V. Appraisal, Invention of Alternatives and Recommendations of Solutions in the Global Common Interest

After trying to predict future decisions, we will now appraise past and predicted future decisions in the light of a public order of human dignity in which all individuals have maximum access to the process of shaping and sharing all the things that humans want out of life: affection, enlightenment, power, rectitude, respect, skill, wealth and well-being.[101] These eight values of a world order of human dignity are all reflected in articles of the 1948 Universal Declaration of Human Rights and covered by the New Haven School of Jurisprudence.[102]

The three previous cases should serve as proof of the clash between different rights as there is almost no chance to provide legal measures against a person who is enjoying the protection of diplomatic immunity.[103] The topic of whether there might even be a true need of limiting the principle of diplomatic immunity when it comes to human rights has to be discussed, especially keeping in mind that human rights have become, little by little more important these days. One could argue that the principle of diplomatic immunity in conjunction with violent crimes constitutes a real international problem that has to be solved as soon as possible. In contrast, one could also find good reasons why diplomatic immunity should be maintained as it is.

The overarching question is which standpoint would be the better one, or is there another possible approach to this issue in order

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[100] *See* Knoop, *supra* note 9.
[101] Wiessner, *supra* note 26; *see also* Wiessner & Willard, *supra* note 28, at 107-108.
[102] *See supra* note 27.
[103] *See* Knoop, *supra* note 9.

to achieve the closest approximation to a public order of human dignity?

A. Appraisal

Accordingly, the first question is whether the principle of diplomatic immunity should stay as it is, or are new rules and regulations necessary? Furthermore, what could possible arguments be in favor of a new legal approach toward this topic? While trying to come to a satisfying appraisal in regards to the topic at hand, the principle of diplomatic immunity when it comes to serious crimes that were committed by a diplomat, the examination of whether this present situation adversely affects the eight values – affection, enlightenment, power, rectitude, respect, skill, wealth and well-being or whether there is rather a positive impact on these values because of the principle of diplomatic immunity, finds that there are positive as well as negative impacts.[104] For example, when it comes to the values of wealth and well-being, the principle of diplomatic immunity contributes to a diplomat being well off and doing well even when harming others, while its effects on the victim of a crime committed by a diplomat are the opposite as they lead to the loss of wealth and well-being. It also depends on which claimant one is looking at whether it be the diplomat, the individual victim, or the state. In almost all cases when the principle of diplomatic immunity comes into play, at least one of the eight values is met and at the same time violated. Yet, the negative sides for the victims of the crime seem to be predominant.

B. Invention of Alternatives

Are there alternatives that should be taken into consideration in order to find suitable accommodations regarding the principle of diplomatic immunity when it comes to serious crimes committed by a diplomat? If there was another way to address the topic at hand, what possible changes would be necessary? Could those changes be easily realized, or rather do they seem unrealistic? Should new rules and regulations be created?

It must be noted that there are fundamental universal human rights that constitute a responsibility of the state to protect. Also, there

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[104] *See supra* note 28.

exist *jus cogens* norms that a state must always comply with as no derogation from those provisions should ever be possible.[105] When it comes to a state's responsibility to protect fundamental universal human rights, this responsibility also needs to be seen in relation to the state's duty to its citizens abroad who are fulfilling the duties of this state – over all diplomats – as the persons to be protected are not only the ones who are moving to a foreign country and therefore possibly getting into dangerous situations, but also those who are representing their state, moreover promoting the dialogue within the international community in order to further peace and security amongst different countries around the world.[106]

So, how far must a state go in order to actually protect its citizens when speaking of the responsibility to protect fundamental universal human rights? If it comes to a clash between different persons´ rights, who should be predominantly protected by the state - diplomats, or victims of crimes that were committed by a person enjoying the protection of diplomatic immunity? Which rule is most important and requires compliance? In particular, what happens if a *jus cogens* norm was somehow violated?

By trying to answer all of these questions, one would probably think about the victim and look at the problem from the victim´s perspective concluding that the victim´s legal situation needs improvement in order for the victim not only to be protected under the law, but also to be able to make use of this legal protection. Thus, one possible alternative could be ratifying as many human rights treaties as possible as well as enacting domestic laws in order to fill the alleged legal gap concerning the dilemma caused by the principle of diplomatic immunity.

As explained, while examining the state´s responsibility to protect, one finds that a state is obligated to not only protect its diplomats – due to the fact that a state is bound by a treaty like the VCDR, or by customary international law – but also every other citizen. Yet, analysis of the possibility to waive diplomatic immunity by a state

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[105] *See* Knoop, *supra* note 9.
[106] *See Bierce*, *supra* note 1; *see also* Knoop, *supra* note 9.

must be considered.[107] If there exists such a possibility, one could argue that there is no need to make any changes regarding the principle of diplomatic immunity as it could be waived whenever a state decides that this needs to be done based on its responsibility to protect fundamental human rights. That alternative would simply be to make use of Article 32 VCDR.

Furthermore, although there is, on the one hand, the danger of a diplomat abusing the principle of diplomatic immunity while committing capital crimes, it has to be pointed out the fact that there might be, on the other hand, also the danger of abuse of the criminal process by a mischievous or hostile host state or official. This could lead persons to easily "frame" a diplomat, especially when he or she comes from a country with which the host state has strained relations.[108] Thus, it becomes clear that the protection of diplomats with the help of the principle of diplomatic immunity can be crucial in such cases during times of tension between the sending and the receiving state; not only when it comes to "the question of war or peace," but also for the functioning of the international communication process as such. In such cases, the principle of diplomatic immunity should be kept as is, and no alternative is needed.

Coming back to the goal of the New Haven School of Jurisprudence of finding an answer to actual problems taking into account the goal of a public order of human dignity in order to benefit the maximum number of human beings, it would help to see the situation of violence and demonstrations like in the case described above that occurred in the Islamic Republic of Pakistan.[109] This case displays that when it comes to relations between different states, people often react very sensitively, and a crime of a diplomat could cause tremendous harm to the peaceful co-existence of two different states. In the end, it may have been the better solution to take the person who had committed the crime out of the country in order not to cause further anger and

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[107] *See* Knoop, *supra* note 9 (explaining how VCDR Article 32 provides the possibility for a state to waive the immunity from jurisdiction of diplomatic agents and other persons enjoying immunity under VCDR Article 37).

[108] *See* GRANT V. MCCLANAHAN, DIPLOMATIC IMMUNITY: PRINCIPLES, PRACTICES, PROBLEMS (1989).

[109] *See supra* note 77.

disputes. This alternative might have been better for the Pakistani population as a whole, as well as for the relationship between the United States of America and the Islamic Republic of Pakistan. This aligns with the same conclusion as mentioned before that the principle of diplomatic immunity, in certain cases, should be kept as it is and no alternative would be needed.

Nevertheless, the concepts of *jus cogens* and customary international law could lead to another alternative that should be mentioned. As already explained, the concept of *jus cogens* formally entered international law through the Vienna Convention on The Law of Treaties of 1969 and this is why one could question whether the principle of diplomatic immunity, which was established before the concept of *jus cogens* came into play, could even be somehow impacted by the international crime character of the conduct of a diplomat.[110]

When it comes to customary international law, an alternative could be to develop by state practice, new rules and regulations. In this context, the question remains whether new customary international law could come into play if only a few states were in agreement on it.[111] In the end, after considering other possible alternatives, it becomes clear that none of the above seems to be too realistic as most alternatives would not be in accordance with the states' political will.

C. Recommendations

Still, the question remains what one would recommend when it comes to the dilemma in regard to the principle of diplomatic immunity. What exactly should be done and who should act? First and foremost, which alternative would be the best in order to promote a public order of human dignity that addresses the maximum number of human beings? As it has become clear, there are many aspects and

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[110] *See* Knoop, *supra* note 9 (As already explained, torture and slavery are recognized as *jus cogens* norms. Thus, the question arises whether the principle of diplomatic immunity should be applied in such a case including the crime of torture. And if so, what would be the result?).

[111] *Id.* Would it make any sense, at all, to try to establish new customary international law if not, at least, most states would participate and agree on doing so? Maybe it only takes one state in order to make the first move, so that others would follow and so that this way, customary international law could be shaped and changed in relatively short order.

difficult questions that need to be evaluated and compared. Although it is difficult to take each and every arising issue into account, the following could be a recommendation for states.

Without touching the principle of diplomatic immunity, states could make use of their power and try to limit the size of foreign misbehaving missions. Also, a state could use its ability to declare a diplomat a so-called *persona non grata*[112] and banish this person from the state's territory. In addition, there remains the possibility of waiving diplomatic immunity under Article 32 VCDR which could help resolve this dilemma if states started to actually make use of this Article. All in all, these are viable possible actions that could be easily taken by a state, which goes to show that there are legal measures that exist and are available to states. Nevertheless, as previously discussed, these available legal means may not be in accordance with the respective state's political will at times.

Conclusion

After all, the author comes to the conclusion that as long as the international system is based on states being the supreme and final sources of legitimacy, there will be diplomats because of the simple fact that they are needed in order to manage crises, prevent outbreaks of hostilities between nations and, overall, promote peace and security amongst states. Only in a situation where all states were subject to one fully autonomous law, would diplomats possibly be replaced by, for example, administration officials or lawyers. Accordingly, and as already emphasized, diplomacy and diplomats are still in demand – today as well as in the foreseeable future.

Coming back to Ambrose Bierce´s statement that diplomacy was "the patriotic art of lying for one's country," critics of diplomacy might see the present conflict between the Russian Federation and Ukraine as proof of their skepticism towards diplomacy. They may argue that maintaining diplomatic relations with the Kremlin is sense-

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[112] *See* Davis VanOpdorp, *What Does It Mean To Be Declared Persona Non Grata?*, DEUTSCHE WELLE (March 6, 2019), https://www.dw.com/en/what-does-it-mean-to-be-declared-persona-non-grata/a-47800884 (A persona non grata is a diplomat who is unacceptable to an accrediting government.).

less these days because a lot of what has been discussed and/or promised was not complied with. Nevertheless, one cannot deny that the developments during 2022 regarding ships that carry the long-awaited and desperately needed Ukrainian grain and that finally left Ukraine,[113] are nothing less than a diplomatic success, and even the smallest outcome in this complex and dangerous situation must be seen as an achievement and is better than nothing. Accordingly, diplomacy cannot be abandoned, especially not now.

Yet, the principle of diplomatic immunity and the question of whether diplomats should be protected in the same way as they used to remain controversial, especially, when it comes to killing or trafficking in persons, because of the principle of diplomatic immunity - overall, due to the VCDR codifying customary international law in principle and apart from only a few exceptions that diplomatic agents who enjoy diplomatic immunity can do whatever they want to do without their receiving state´s courts being able to persecute them. It has to be taken into account that there have been and will be terrible crimes committed by diplomats, but it must also be remembered that states, being the main actors regarding the subject at hand when it comes to international law, are not willing to easily give up on any of their rights or sovereignty, particularly, in regards to the protection of their citizens and their maintenance of peace with other states. In this context, it also has to be pointed out that states do not only want to maintain and demonstrate their sovereignty, but also that nationality usually creates passion and the wish to defend its citizens in order to be special. Thus, why should a state give up a well-based way to protect those citizens who are of the greatest importance to the state as they are the state´s representatives abroad?

All the discussed leads to the conclusion that such a big change like modifying the principle of diplomat immunity cannot be easily achieved, although the need for a revision of the current law may be obvious. Nevertheless, perhaps right now while we are facing a real turning point in history,[114] the time has come to make certain changes

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[113] *See* Yaroslav Trofimov & Jared Malsin, *First Convoy of Ships Carrying Ukrainian Grain Leaves Odessa Under New Deal*, WALL ST. J. (Aug. 5, 2022), https://www.wsj.com/articles/first-convoy-of-ships-carrying-ukrainian-grain-leave-odessa-under-new-deal-11659697193.

[114] *See* Introduction.

to long-established precepts, including the principle of diplomatic immunity.

Although the latest developments in the world all seem to make collaboration at the international level more and more impossible,[115] there might yet be hope that today´s situation, with all its negative impacts globally, could lead to something good and even better than what we have and are used to today.

In this context, the author would like to point at Henry Kissinger, who is to be considered an expert in the field of diplomacy,[116] and who starts his latest book with an introduction stating. "Any society, whatever its political system, is perpetually in transit between a past that forms its memory and a vision of the future that inspires its evolution."[117]

Furthermore, Kissinger is of the opinion that the world is undergoing a transformation as it did during the Age of Enlightenment.[118] By comparing the situation we are facing today to such a profound change on all sorts of levels[119] during the 17th and 18th centuries, Kissinger promotes that sometimes, big changes and being forced to rethink and reevaluate everything, is a great thing that could affect a

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[115] *See* Kenneth Chang & Ivan Nechepurenko, *Russia Says It Will Quit the International Space Station After 2024*, N.Y. TIMES (July 26, 2022), https://www.nytimes.com/2022/07/26/science/russia-space-station.html (For example, the Russian Federation – after invading Ukraine causing unprecedented turmoil since World War II, especially, in Europe as previously discussed - just declared that 2025 will mark the end of its cooperation in space on the international space station. The withdrawal would end two decades of post-Cold war cooperation in space between the Unites States and Russia, which jointly built and operate the station.).

[116] *See* The Editors of Encyclopedia, *Henry Alfred Kissinger*, BRITANNICA (Aug. 20, 2022), https://www.britannica.com/biography/Henry-Kissinger; *see also* Henry A. Kissinger (2022), https://www.henryakissinger.com (Henry Alfred Kissinger was born in the Federal Republic of Germany on May 27, 1923 and his family immigrated to the United States of America in 1938 where he served, among other important positions, as the 56th Secretary of State.).

[117] *See* HENRY KISSINGER, LEADERSHIP: SIX STUDIES IN WORLD STRATEGY (2022).

[118] Kissinger: "Schwierigkeiten überwindbar", ZDF (July 24, 2022), https://www.zdf.de/nachrichten/heute-journal/henry-kissinger-ex-aussenminister-usa-100.html.

[119] *See* The Editors of Encyclopedia, *Enlightenment*, BRITANNICA (Sep. 21, 2022), https://www.britannica.com/event/Enlightenment-European-history (To give an example, Enlightenment led to changes, for instance on the philosophical, sociological and legal level.).

large number of different aspects of life.[120] Thus, one might want to add, the principle of diplomatic immunity might also be subject to this historical change.

Although the author is of the opinion that the principle of diplomatic immunity is still important in order to keep international relationships flourishing, the author also suggests that, at least, when it comes down to international crimes such as genocide or war crimes, applying the principle of diplomatic immunity should no longer be considered.

[120] Knoop, *supra* note 9.